UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re: BKY No.: 15-43828

James Alan Rothers, Chapter 7

Debtor.

Adv. Case No.: 17-4009

J. Richard Stermer, Trustee,

Plaintiff,

vs. **AMENDED ADVERSARY COMPLAINT**

ABC Bin Company, LLC and Romadillo Casillas Guzman,

ABCs.

J. Richard Stermer, Trustee ("**Trustee**") of the bankruptcy estate of James Alan Rothers ("**Debtor**"), as and for his Amended Complaint against ABC Bin Company, LLC ("**ABC**") and Romadillo Casillas Guzman ("**Guzman**"), states and alleges as follows:

1. The Trustee is the duly appointed Chapter 7 Trustee of the bankruptcy estate of the Debtor.

2. This bankruptcy case was commenced on November 3, 2015 by the filing of a voluntary Chapter 7 Petition ("**Filing Date**").

3. This adversary proceeding is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

4. This Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§157 and 1334. This case arises under 11 U.S.C. §§544, 548, 550 and 551.

5. ABC is an Iowa domestic limited liability company with a registered agent and home office address listed as being Robert A. Dotson, 101 North Hall St., Algona, IA 50511.

6. Guzman resides in Hector, Minnesota and is alleged by the Debtor to be the owner of ABC.

7. Debtor claims that on or about November 17, 2014 he borrowed the sum of $240,000.00 from ABC and the same was evidenced by a promissory note signed on November 20, 2014 (the "**Note**"). Exhibit A hereto (Note).

8. Debtor also claims that on or about November 17, 2014 he entered into a security agreement with ABC granting ABC a security interest in virtually all of Debtor's personal property (the "**Security Agreement**"). The Security Agreement appears to have been signed on November 20, 2014. See Exhibit B hereto (Security Agreement). It does not appear that a UCC-1 has been filed by ABC.

9. In addition to the forgoing, Debtor executed a mortgage on November 20, 2014 granting ABC a mortgage on lien ("**Mortgage**") securing the Note. See Exhibit C hereto (Mortgage). The Mortgage created a lien on the Debtor's homestead in Kerkhoven, MN and was recorded with Office of Land Records in Swift County, Minnesota, at document number 240187 on December 19, 2014.

10. The real estate that is the subject of the Mortgage is legally described as follows:

> Lots 19 through 20, Block 9, City of Kerkhoven, Swift County, State of Minnesota

11. Debtor claims that he sold his equity interest in ABC to a Guzman for the sum of $500,000.00 in 2013 (the "**Sale**"). There is no evidence that this was a legitimate business transaction.

12. It appears that the $500,000.00 received by the Debtor in furtherance of the Sale was actually just funds accrued by ABC which the Debtor then withdrew. Guzman did not have an economic stake in the Sale other than to receive the equity of ABC.

13. The purported sale of ABC to Guzman and all ABC's dealings with the Debtor since that time are a part of a scheme to hinder, delay or defraud Debtor's creditors orchestrated by the Debtor his counsel, Gregory R. Anderson ("**Anderson**"). The Note, Security Agreement, Mortgage and Sale are in furtherance of this ruse and are without legitimate economic substance. Anderson, who is also Debtor's bankruptcy attorney, drafted the Mortgage.

14. The Note, Security Agreement, Mortgage and the Sale shall be referred to herein as the "**Transfers**."

COUNT I – FRAUDULENT TRANSFER AS TO PRESENT AND FUTURE CREDITORS BY CONSTRUCTIVE FRAUD, UNIFORM VOIDABLE TRANSACTIONS ACT (UVTA), MINN. STAT. §513.44(a)(2)

15. The Trustee hereby realleges and incorporates herein by reference the foregoing paragraphs of this Complaint.

16. Debtor made the Transfers without receiving a reasonably equivalent value in exchange for the Transfers at a time when the Debtor was engaged in or was about to engage in a business or a transaction for which the remaining assets of the Debtor were unreasonably small in relation to the business or transaction or when the Debtor intended to incur, or believed or reasonably should have believed that he would incur, debts beyond its ability to pay as they became due.

17. Pursuant to Minn. Stat. §513.44(a)(2) (Uniform Voidable Transactions Act), made applicable to this proceeding by 11 U.S.C. §544, and pursuant to 11 U.S.C. §550, Trustee

seeks recovery from ABC and Guzman the Transfers or the value of the Transfers, plus prejudgment interest.

18. In the alternative, the Trustee seeks a money judgment for the value of each of the Transfers including prejudgment interest.

COUNT II – FRAUDULENT TRANSFER AS TO PRESENT CREDITORS BY CONSTRUCTIVE FRAUD, UNIFORM VOIDABLE TRANSACTIONS ACT (UVTA), MINN. STAT. §513.45(a)

19. The Trustee hereby realleges and incorporates herein by reference the foregoing paragraphs of this Complaint.

20. Debtor made the Transfers to ABC without receiving a reasonably equivalent value in exchange for the Transfers at a time when the Debtor was insolvent or the Debtor became insolvent as a result of the Transfers.

21. Pursuant to Minn. Stat. §513.45(a) (Uniform Voidable Transactions Act), made applicable to this proceeding by 11 U.S.C. §544, and pursuant to 11 U.S.C. §550, the Trustee seeks recovery from ABC and Guzman the Transfers.

22. In the alternative, the Trustee seeks a money judgment for the value of each of the Transfers including prejudgment interest.

COUNT III – U.S.C. §548 (FRAUDULENT TRANSFER)

23. The Trustee hereby realleges and incorporates herein by reference the foregoing paragraphs of this Complaint.

24. The Debtor made the Transfers with actual intent to hinder, delay or defraud RSR, Inc. and other creditors of the Debtor that existed at the time of the Transfers.

25. ABC and Guzman may not avail themselves of the "good faith" defense provided by 11 U.S.C. §548(c) as they were participants in a scheme orchestrated by the Debtor and was, in fact, controlled by the Debtor.

26. Pursuant to 11 U.S.C. §548(a)(1)(A), Plaintiff seeks to avoid the Transfers, or the value of the Transfers, together with prejudgment interest under 11 U.S.C. §550.

27. ABC and Guzman are not entitled to any "good faith" defense provided by 11 U.S.C. §550(e).

COUNT IV - AVOIDABLE TRANSFER UNDER 11 U.S.C. §544(a)

28. The Trustee hereby realleges and incorporates herein by reference the foregoing paragraphs of this Complaint.

29. ABC's claimed security interest in the Debtor's assets pursuant to the Security Agreement was not properly perfected, if perfected at all.

30. With his rights as a hypothetical lien creditor, the Trustee can avoid ABC's unperfected lien in Debtor's assets under 11 U.S.C. §544(a), and the value of the lien is recoverable under 11 U.S.C. §550(a), with the lien preserved for the benefit of the estate pursuant to 11 U.S.C. §551.

COUNT V – EQUITABLE SUBORDINATION

31. The Trustee hereby realleges and incorporates herein by reference the foregoing paragraphs of this Complaint.

32. Both before and after the commencement of the case, Debtor, working in concert with Anderson, engaged in inequitable conduct which includes, but is not limited to:

(a) Creating the illusion of the Transfers.

(b) Lying or being evasive under oath in depositions and examinations about the nature of the Transfers and the parties involved.

(c) Filing false bankruptcy schedules.

33. ABC's and Guzman's interests with respect to the Transfers are simply the product of Debtor's efforts to put his assets beyond the reach of creditors while maintaining, personally, the control and benefit of those assets. This is evidenced by the fact that Debtor has caused litigation to be commenced against the City of Kerkhoven referring to ABC Bin Company, LLC as "my company." This misconduct resulted in injury to RSR, Inc. and other creditors of the Debtor, and conferred an unfair advantage upon the ABC, Guzman and the Debtor in these bankruptcy proceedings.

34. The claims of ABC and Guzman in these proceedings should be equitably subordinated to the claims of all other creditors pursuant to 11 U.S.C. §510(c)(1).

WHEREFORE, the Trustee respectfully requests that the Court enter an Order and Judgment against ABC and Guzman as follows:

1. For judgment under Counts I through III, avoiding the Transfers, ordering recovery of the Transfers, or, in the alternative, awarding a judgment in an amount to be proven at trial together with interest thereon.

2. For judgment under Court IV, avoiding the Security Agreement.

3. Preserving all of the avoided Transfers for the benefit of the bankruptcy estate pursuant to 11 U.S.C. §551.

4. For judgment under Count V equitably subordinating the claims of all ABC and Guzman to the claims of all other creditors in this case.

5. Such other relief as the Court deems just and equitable in the premises.

LEONARD, O'BRIEN
SPENCER, GALE & SAYRE, LTD.

Dated: January 25, 2017

By /e/ Matthew R. Burton

Matthew R. Burton, #210018
Attorneys for J. Richard Stermer, Trustee
100 South Fifth Street, Suite 2500
Minneapolis, Minnesota 55402-1216
(612) 332-1030

PROMISSORY NOTE

US $240,000.00 Willmar, Minnesota

November 17, 2014

FOR VALUE RECEIVED, the undersigned ("Borrower") promises to pay ABC Bin Company, LLC, a limited liability company organized under the revised Uniform Limited Liability Act, Iowa Code Chapter 489, the principal sum of two hundred and forty thousand dollars ($240,000.00) with interest on the unpaid principal balance from the date of this note, until paid, at the rate of 4% per annum. Commencing on the first day of December 2015 and continuing on December 1 of each year thereafter until paid, the Borrower shall pay consecutive annual principal installments of twelve thousand dollars ($12,000.00) plus accrued interest. However, the borrower shall have the option to forego the payment of principal and pay accrued interest on the first day of December of each year.

If payments under this Note are not paid when due and remained unpaid after a date specified by a notice to the Borrower, the entire principal amount outstanding and accrued interest thereon shall at once become due and payable at the option of the Note holder. The date specified shall not be less than 30 days from the date such notice is mailed. The Note Holder may exercise his option to accelerate during any default by Borrower regardless of any prior forbearance. If suit is brought to collect this Note, the Note holder shall be entitled to collect all reasonable costs and expenses of suit, including but not limited to, reasonable attorney's fees.

The Borrower may prepay the principal amount outstanding in whole or in part. The Note holder may require that any partial prepayments (i) be made on the date annual installments are due and (ii) be in the amount of that part of one or more annual installments which would be applicable to principal. Any partial prepayment shall be applied against the principal amount outstanding and shall not postpone the due date of any subsequent annual installments or change the amount of such installments, unless the Note holder shall otherwise agree in writing.

The indebtedness evidenced by this Note is secured by a mortgage and security agreement dated Nov 20, 2014.

James Rothers

EXHIBIT
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SECURITY AGREEMENT

This Security Agreement ("Security Agreement") is made on November 20, 2014 by James Rothers, an individual ("Debtor") in favor of ABC Bin Company, LLC, an Iowa LLC, ("Secured Party").

This Security Agreement is entered into by Debtor in favor of Secured Party in connection with a loan ("Loan") in the principal amount of $240,000 to be made by Secured Party to Debtor under a Loan Agreement ("Loan Agreement") between Debtor and Secured Party of even date.

Debtor therefore agrees with Secured Party that:

1. **Definitions.** Any capitalized term not defined in this Security Agreement shall have the definition in the Loan Agreement. Unless the context otherwise requires, all terms contained herein shall have the definition in the Code (as defined below). If the Code is used to define any term herein or in the Loan Document and such term is defined differently in different Articles of the Code, the definition of such term in Article 9 of the Code shall govern. "Code" means the Uniform Commercial Code as the same is enacted and in effect in Minnesota; provided, that in the event that, by mandatory provisions of law, any or all of the attachment, perfection or priority of, or remedies regarding, Lender's lien on any Collateral is governed by the Uniform Commercial Code as enacted and in effect in a jurisdiction other than Minnesota, the term "Code" shall mean the Uniform Commercial Code as enacted and in effect in such other jurisdiction solely for provisions relating to such attachment, perfection, priority or remedies and for definitions related to such provisions.

2. **Security Interest.** Debtor grants to Secured Party a security interest ("Security Interest") in the Collateral described in Paragraph 3 below to secure the payment and performance of the following debts, liabilities and obligations of Debtor to Secured Party (collectively, "Obligations"):

   (a) Debtor's obligations under the Loan Agreement, this Security Agreement or any other Loan Document; and

   (b) every debt, liability and obligation of every type and description which Debtor may now or at any time owe to Secured Party (whether such debt, liability or obligation now exists or is hereafter created or incurred, and whether it is or may be direct or indirect, due or to become due, absolute or contingent, primary or secondary; liquidated or unliquidated, or joint, several or joint and several); and

   (c) the repayment of (i) any amounts that Secured Party may advance or spend for the maintenance or preservation of the Collateral and (ii) any other expenditures that Secured Party may make under this Security Agreement or for the benefit of Debtor; and

EXHIBIT
tabbies
B

(d) all amounts owed under any modifications, renewals or extensions of the foregoing Obligations; and

(e) any of the foregoing Obligations that arise after filing a petition by or against Debtor under the Bankruptcy Code, even if the obligations do not accrue because of the automatic stay under Section 362 of the Bankruptcy Code or otherwise.

3. **Collateral.** As used herein, the term "Collateral" means all of the personal property and rights of Debtor, wherever located, whether now owned or hereafter acquired or arising, and all proceeds and products including:

(a) all goods, personal property, and fixture property of every kind and nature including, without limitation, all furniture, fixtures, equipment, raw materials, inventory, and all accessions thereto;

(b) all accounts (including health-care-insurance receivables, if any), contract rights, rights to the payment of money or funds advanced or sold, insurance refund claims and all other insurance claims and proceeds;

(c) all general intangibles including, without limitation, all payment intangibles, tax refund claims, judgments and liens arising therefrom, license fees, patents, patent applications, trademarks, trademark application, trade names, copyrights, copyright applications, rights to sue and recover for past infringement of patents, trademarks and copyrights, computer programs, computer software, engineering drawings, service marks, customer lists, goodwill, and all licenses, permits, agreements of any kind or nature under that (i) Debtor operates or has authority to operate, (ii) Debtor possesses, uses or has authority to possess or use property (whether tangible or intangible) of others, or (iii) others possess, use, or have authority to possess or use property (whether tangible or intangible) of Debtor;

with, to the extent not listed above as original Collateral, all substitutions and replacements for and products of the foregoing property not constituting consumer goods and with proceeds of any and all of the foregoing property and, with all tangible Collateral, with all accessions and, except in consumer goods, with (i) all accessories, attachments, parts, equipment and repairs now or hereafter attached or affixed to or used in connection with any such goods, and (ii) all warehouse receipts, bills of lading and other documents of title now or hereafter covering such goods.

4. **Representations, Warranties and Agreements.** Debtor represents, warrants and agrees that:

(a) Debtor is the holder of an unexpired driver's license or state identification card issued by Minnesota in Debtor's legal name (as set forth in the first paragraph of this Security Agreement).

5. **Representations, Warranties and Agreements With Respect to Collateral.** Debtor represents, warrants and agrees that:

(a) Debtor has (or will have when Debtor acquires rights in Collateral) absolute title to each item of Collateral free and clear of all claims, security interests, liens, encumbrances, and restrictions on transfer or pledge except the Security Interest and will defend the Collateral against all claims or demands of all persons other than Secured Party.

(b) Debtor covenants it will:

(i) keep all tangible Collateral in good repair, working order and condition, normal depreciation excepted, and will replace any worn, broken or defective parts;

(ii) promptly pay all taxes and other governmental charges levied or assessed upon or against any Collateral;

(iii) keep all Collateral free and clear of all security interests, liens, encumbrances, and restrictions except the Security Interest;

(iv) at all reasonable times, permit Lender or its representatives to examine or inspect any Collateral, wherever located, and to examine, inspect and copy Debtor's books and records pertaining to the Collateral and its business and financial condition and to send and discuss with account debtors and other obligors requests for verifications of amounts owed to Debtor;

(v) keep accurate and complete records pertaining to the Collateral and pertaining to Debtor's business and financial condition and submit to Secured Party such periodic reports concerning the Collateral and Debtor's business and financial condition as Secured Party may reasonably request;

(vi) promptly notify Lender of any loss of or material damage to any Collateral or of any adverse change, known to Debtor, in the prospect of payment of any sums due on or under any instrument, chattel paper, or account constituting Collateral;

(vii) if Secured Party requests (whether the request is made before or after the occurrence of an Event of Default), promptly deliver to Secured Party any instrument, document or chattel paper constituting Collateral, duly endorsed or assigned by Debtor;

(viii) bear the risk of loss of the Collateral and keep all tangible Collateral insured against risks of fire (including so-called extended coverage), theft, collision (in case of Collateral comprising motor vehicles) and such other risks and in such amounts as Secured Party may reasonably request, with any loss payable to Lender to the extent of its interest;

(ix) not use or keep any Collateral, or permit it to be used or kept, for any unlawful purpose or in violation of any law or ordinance; and

(x) not permit any tangible Collateral to become part of or to be affixed to any real property without first assuring to the reasonable satisfaction of Lender that the Security Interest will be prior and senior to any interest, or lien then held or thereafter acquired by any mortgagee of such real property or the owner or purchaser of any interest therein.

6. **Perfection of Security Interests.**

(a) **Financing Statements.** Debtor authorizes Secured Party to file one or more financing statements describing the Collateral or any agricultural liens or other statutory liens held by Secured Party.

(b) **Certificates of Title.** If any Collateral is comprised of a motor vehicle or other personal property with a certificate of title, Debtor will execute such documents as required to have the Security Interest properly noted on the certificate of title. Debtor shall execute, deliver or endorse any and all instruments, documents, assignments, security agreements and other agreements and writings which Secured Party may reasonably request to secure, protect, perfect or enforce the Security Interest and Secured Party's rights under this Security Agreement.

(c) **Promissory Notes and Tangible Chattel Paper.** If Debtor shall hold or acquire any promissory notes or tangible chattel paper, Debtor shall endorse, assign and deliver them to Secured Party, accompanied by such instruments of transfer or assignment duly executed in blank as Secured Party may specify.

(d) **Deposit Accounts.** For each deposit account that Debtor opens or maintains, Debtor shall, at Secured Party's request and option, under an agreement in form and substance satisfactory to Secured Party, either: (i) cause the depositary bank to comply with instructions from Secured Party to such depositary bank directing the disposition of funds credited to such deposit account, without further consent of Debtor, or (ii) arrange for Secured Party to become the customer of the depositary bank regarding the deposit account with Debtor being permitted to withdraw funds from such deposit account only with the consent of Secured Party.

(e) **Investment Property.** If Debtor holds or acquires any certificated securities, Debtor shall endorse, assign and deliver them to Secured Party, accompanied by such instruments of transfer or assignment duly executed in blank as Secured Party may specify. If any securities now or hereafter acquired by Debtor are uncertificated and are issued to Debtor or its nominee directly by the issuer, Debtor shall immediately notify Secured Party and, at Secured Party's request and option, under an agreement in form and substance satisfactory to Secured Party, either: (i) cause the issuer to comply with instructions from Secured Party as to such securities, without further consent of Debtor, or (ii) arrange for Secured Party to become the registered owner of the securities.

(f) **Investment Property Held by Intermediary.** If any securities (whether certificated or uncertificated) or other investment property held or acquired by Debtor are held by Debtor or its nominee through a securities intermediary or commodity intermediary, Debtor shall immediately notify Secured Party and, at Secured Party's request and option, under an agreement in form and substance satisfactory to Secured Party, either: (i) cause such securities intermediary or commodity intermediary to comply with entitlement orders or other instructions from Secured Party to such securities intermediary as to such securities or other investment property or to apply any value distributed for any commodity contract as directed by Secured Party to such commodity intermediary, in each case without further consent of Debtor or such nominee, or (ii) in the case of financial assets or other investment property held through a securities intermediary, arrange for Secured Party to become the entitlement holder regarding such investment property, with Debtor being permitted, only with the consent of Secured Party, to exercise rights to withdraw funds or otherwise deal with such investment property.

(g) **Collateral in the Possession of a Bailee or other Third Parties.** Debtor shall have possession of the Collateral, except where expressly otherwise provided in this Security Agreement or where Secured Party perfects the Security Interest by possession. If any Collateral is in the possession of a bailee or other third party, Debtor shall promptly notify Secured Party and, at Secured Party's request and option, shall promptly obtain an acknowledgment from the bailee or third party, in form and substance satisfactory to Secured Party, that the bailee or third party holds such Collateral for the benefit of Secured Party, and that such bailee agrees to comply, without further consent of Debtor, with the instructions from Secured Party as to such Collateral.

7. **Events of Default.** Each of the following occurrences shall constitute an event of default under this Security Agreement ("Event of Default"):

(a) Debtor fails to pay any or all of the Obligations when due or (if payable on demand) on demand, shall fail to observe or perform any covenant or agreement binding on it or shall be in default under any loan or credit agreement between it and Secured Party;

(b) any representation or warranty by Debtor in this Security Agreement or made to Secured Party in any financial statements or reports submitted to Secured Party by or for Debtor is materially false or misleading when made;

(c) a transfer or disposition of Collateral, except as expressly permitted by this Security Agreement;

(d) Debtor is in default under any promissory note or other obligation secured by a security agreement covering all or any portion of the Collateral;

8. **Remedies upon Event of Default.** Upon the occurrence of an Event of Default under Paragraph 7, Secured Party may exercise one or more of the following rights and remedies:

(a) declare all Obligations to be immediately due and payable, and the same shall thereupon be immediately due and payable, without presentment or other notice or demand;

(b) exercise and enforce any or all rights and remedies available upon default to a secured party under the Code, including the right to take possession of any Collateral, proceeding without judicial process (without a prior hearing or notice, which Debtor expressly waives), and the right to sell, lease or otherwise dispose of any or all of the Collateral. In connection therewith, Secured Party may require Debtor to make the Collateral available to Secured Party at a place to be designated by Secured Party reasonably convenient to both parties. If notice to Debtor of any intended disposition of Collateral or any other intended action is required by law, such notice shall be deemed commercially reasonable if given at least 10 calendar days prior to intended disposition or other action;

(c) exercise or enforce any or all other rights or remedies available to Secured Party by law or agreement against the Collateral, against Debtor or against any other person or property.

Upon the occurrence of the Event of Default described in Paragraph 7(e)(ii), all Obligations shall be immediately due and payable without demand or notice. Secured Party is granted a nonexclusive, worldwide and royalty-free license to use or otherwise exploit all trademarks, trade secrets, franchises, copyrights and patents of Debtor that Secured Party deems necessary or appropriate to the disposition of any Collateral.

Whether or not an Event of Default has occurred, Debtor shall pay when due or reimburse Secured Party on demand for all costs of collection of any of the Obligations and all other out-of-pocket expenses incurred by Secured Party for the creation, perfection, satisfaction, protection, defense or enforcement of the Security Interest or the creation, continuance, protection, defense or enforcement of this Security Agreement or any or all of the Obligations, including, but not limited to: (a) filing fees; (b) costs of foreclosure; (c) costs of obtaining money damages; and (d) reasonable attorney's fees for any purpose relating to the enforcement of this Security Agreement including consultation, drafting documents, sending notices or instituting, prosecuting or defending litigation or arbitration.

If during a sale of Collateral following an Event of Default, Secured Party sells the Collateral upon credit, Debtor will be credited only with payments actually made by the purchaser and received by Secured Party. If the purchaser fails to pay for the Collateral, Secured Party may resell the Collateral and Debtor shall be credited with the proceeds of the Sale. To the extent permitted under applicable law, Secured Party may disclaim any warranty of title or any other warranty regarding any Collateral sold by Secured Party following an Event of Default.

9. **Miscellaneous.**

(a) No modification of this Security Agreement shall be valid unless such modification is in writing and signed by the parties hereto.

(b) The failure of a party to enforce a right under this Security Agreement shall not be construed as a waiver of that right. No waiver of any provision of this Security Agreement shall be valid unless in writing and signed by the person or party against whom the waiver is charged.

(c) All rights and remedies of Lender shall be cumulative and may be exercised singularly or concurrently, at Lender's option, and the exercise or enforcement of any one such right or remedy shall neither be a condition to nor bar the exercise or enforcement of any other.

(d) Lender's duty of care regarding Collateral in its possession (as imposed by law) shall be deemed fulfilled if Lender exercises reasonable care in physically safekeeping such Collateral or, in the case of Collateral in the custody or possession of a bailee or other third person, exercises reasonable care in the selection of the bailee or other third person, and Lender need not otherwise preserve, protect, insure or care for any Collateral. Lender shall not be obligated to preserve any rights Debtor may have against prior parties, to realize on the Collateral at all or in any manner or order, o' to apply any cash proceeds of Collateral in any order of application.

(f) Secured Party has no obligation to satisfy the Obligations by collecting them from any other person liable for them and Secured Party may release, modify or waive any collateral provided by any other person to secure the Obligations, all without affecting Secured Party's rights against Debtor. Debtor waives any right it may have to require Secured Party to pursue any third person for the Obligations.

(g) Except as otherwise provided to the contrary, this Security Agreement shall be binding upon and inure to the benefit of the parties hereto and their [personal representatives, heirs,] successors[,] and assigns. No other person has any rights, interest, or claims hereunder or is entitled to any benefits under or on account of this Security Agreement as a third-party beneficiary or otherwise.

(h) This Security Agreement takes effect when signed by Debtor and delivered to Lender, and Debtor waives notice of Lender's acceptance. Lender may (but need not) execute this Security Agreement; the failure of Lender to execute this Security Agreement shall not affect or impair the validity or effectiveness of this Security Agreement.

(i) This Security Agreement shall be governed by, interpreted, and enforced under the laws of Minnesota, except to the extent that, by mandatory provisions of law, any or all of the attachment, perfection or priority of, or remedies regarding, Lender's lien on any Collateral is governed by the Uniform Commercial Code as enacted and in effect in a jurisdiction other than Minnesota. In such case, the law of such other jurisdiction shall apply but solely for provisions relating to such attachment, perfection, priority or remedies. Any litigation between the Parties shall be conducted exclusively in the state and federal courts in [County Name] County, Minnesota, and any arbitration or similar proceeding shall be conducted exclusively at a location within such county and state. Each Party consents to the jurisdiction and venue of the courts described above.

The Debtor executes this Security Agreement on the date set forth in the first paragraph of this Agreement.

James Rothers

By: James Rothers

[redacted]/Registration tax hereon of $ 552.00 paid
Taxes paid and transfer entered ☐
Certificate of Real Estate Value received ☐
Penalty as per MS 507.235 ( ) Exempt ( ) Imposed
Date 12-19-14 Treasurer's Receipt No. 66124
Ronald A. Vadnais
County Treasurer
Kim Setetal
County Auditor

Swift County Scanning Label Doc #240187

Office of Land Records in Swift County, MN
I hereby certify that the within instrument was filed in this office on December 19, 2014 at 9:30 AM Doc# 240187
Pages: 4 Rec Fee $46.00
Mary Amundson, Department Head
By Cara [signature] Deputy

(Top 3 inches reserved for recording data)

MORTGAGE
by Individual(s)

MORTGAGE REGISTRY TAX DUE: $552.00

DATE: November 20, 2014

X ***CHECK IF APPLICABLE:*** **NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, ENFORCEMENT OF THIS MORTGAGE IN MINNESOTA IS LIMITED TO A DEBT AMOUNT OF $240,000.00 UNDER CHAPTER 287 OF MINNESOTA STATUTES.**

THIS MORTGAGE ("**Mortgage**") is given by **James Rothers, a single person**, as mortgagor ("**Borrower**"), to **ABC Bin Company, LLC, an Iowa LLC**, as mortgagee ("**Lender**"). In consideration of the receipt of **two hundred and forty thousand dollars** Dollars (**$240,000**) (the "**Indebtedness**") from Lender, Borrower hereby mortgages, with power of sale, the real property in **Swift** County, Minnesota, legally described as follows:

Lots 19 through 20, Block 9, City of Kerkhoven, Swift County, State of Minnesota

Check here if all or part of the described real property is Registered (Torrens) ☐

together with all hereditaments and appurtenances belonging thereto (the "**Property**"), subject to the following exceptions:

(a) Covenants, conditions, restrictions (without effective forfeiture provisions) and declarations of record, if any;
(b) Reservations of minerals or mineral rights by the State of Minnesota, if any;
(c) Utility and drainage easements which do not interfere with present improvements;
(d) Applicable laws, ordinances, and regulations;
(e) The lien of real estate taxes and installments of special assessments not yet due and payable; and
(f) The following liens or encumbrances, if any: **superior mortgage to First Security Bank, NA**

28-0057-000

EXHIBIT
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Borrower covenants with Lender as follows:

1. **Repayment of Indebtedness.** If Borrower (a) pays the Indebtedness to Lender according to the terms of the promissory note or other instrument of even date herewith that evidences the Indebtedness and all renewals, extensions, and modifications thereto (the "**Note**"), final payment of which is due on [**Insert maturity date**]; (b) pays interest on the Indebtedness as provided in the Note; (c) repays to Lender, at the times and with interest as specified, all sums advanced in protecting the lien of this Mortgage, if any; and (d) keeps and performs all the covenants and agreements contained herein, then Borrower's obligations under this Mortgage will be satisfied, and Lender will deliver an executed satisfaction of this Mortgage to Borrower. It is Borrower's responsibility to record any satisfaction of this Mortgage at Borrower's expense.

2. **Statutory Covenants.** Borrower makes and includes in this Mortgage the following covenants and provisions set forth in Minn. Stat. 507.15, and the relevant statutory covenant equivalents contained therein are hereby incorporated by reference:

(a) To warrant the title to the Property;
(b) To pay the Indebtedness as herein provided;
(c) To pay all taxes;
(d) That the Property shall be kept in repair and no waste shall be committed;
(e) To pay principal and interest on prior mortgages (if any).

3. **Additional Covenants and Agreements of Borrower.** Borrower makes the following additional covenants and agreements with Lender:

(a) Borrower shall keep all buildings, improvements, and fixtures now or later located on all or any part of the Property (collectively, the "**Improvements**") insured against loss by fire, lightning, and such other perils as are included in a standard all-risk endorsement, and against loss or damage by all other risks and hazards covered by a standard extended coverage insurance policy, including, without limitation, vandalism, malicious mischief, burglary, theft, and if applicable, steam boiler explosion. Such insurance shall be in an amount no less than the full replacement cost of the Improvements, without deduction for physical depreciation. If any of the Improvements are located in a federally designated flood prone area, and if flood insurance is available for that area, Borrower shall procure and maintain flood insurance in amounts reasonably satisfactory to Lender. Borrower shall procure and maintain liability insurance against claims for bodily injury, death, and property damage occurring on or about the Property in amounts reasonably satisfactory to Lender and naming Lender as an additional insured, all for the protection of the Lender.

(b) Each insurance policy required pursuant to Paragraph 3(a) must contain provisions in favor of Lender affording all right and privileges customarily provided under the so-called standard mortgagee clause. Each policy must be issued by an insurance company or companies licensed to do business in Minnesota and acceptable to Lender. Each policy must provide for not less than ten (10) days written notice to Lender before cancellation, non-renewal, termination, or change in coverage. Borrower will deliver to Lender a duplicate original or certificate of such insurance policies and of all renewals and modifications of such policies.

(c) If the Property is damaged by fire or other casualty, Borrower must promptly give notice of such damage to Lender and the insurance company. In such event, the insurance proceeds paid on account of such damage will be applied to payment of the amounts owed by Borrower pursuant to the Note, even if such amounts are not otherwise then due, unless Borrower is permitted to make an election as described in the next paragraph. Such amounts first will be applied to unpaid accrued interest and next to the principal to be paid as provided in the Note in the inverse order of their maturity. Such payment(s) will not postpone the due date of the installments to be paid pursuant to the Note or change the amount of such installments. The balance of insurance proceeds, if any, will be the property of Borrower.

(d) Notwithstanding the provisions of Paragraph 3(c), and unless otherwise agreed by Borrower and Lender in writing, if (i) Borrower is not in default under this Mortgage (or after Borrower has cured any such default); (ii) the mortgagees under any prior mortgages do not require otherwise; and (iii) such damage does not exceed ten percent (10%) of the then assessed market value of the Improvements, then Borrower may elect to have that portion of such insurance proceeds necessary to repair, replace, or restore the damaged Property (the "**Repairs**") deposited in escrow with a bank or title insurance company qualified to do business in Minnesota, or such other party as may be mutually agreeable to Lender and Borrower. The election may only be made by written notice to Lender within sixty (60) days after the damage occurs; and the election will only be permitted if the plans, specifications, and contracts for the Repairs are approved by Lender, which approval shall not be unreasonably withheld, conditioned, or delayed. If such a permitted election is made by Borrower, Lender and Borrower shall jointly deposit the insurance proceeds into escrow when paid. If such insurance proceeds are insufficient for the Repairs, Borrower shall, before the commencement of the Repairs, deposit into such escrow sufficient additional money to insure the full payment for the Repairs. Even if the insurance proceeds are unavailable or are insufficient to pay the cost of the Repairs, Borrower shall at all times be responsible to pay the full cost of the Repairs. All escrowed funds shall be disbursed in accordance with sound, generally accepted, construction disbursement procedures. The costs incurred or to be incurred on account of such escrow shall be deposited by Borrower into such escrow before the commencement of the Repairs. Borrower shall complete the Repairs as soon as reasonably possible and in a good and workmanlike manner, and in any event the Repairs shall be completed by Borrower within one (1) year after the damage occurs. If, following the completion of and payment for the Repairs, there remains any undisbursed escrow funds, such funds shall be applied to payment of the amounts owed by Borrower under the Note in accordance with Paragraph 3(c).

(e) If all or any part of the Property is taken in condemnation proceedings instituted under power of eminent domain or is conveyed in lieu thereof under threat of condemnation, the money paid pursuant to such condemnation or conveyance in lieu thereof must be applied to payment of the amounts due by Borrower to Lender under the Note as set forth in Paragraph 3(c), even if such amounts are not then due to be paid.

(f) Borrower will diligently complete all Improvements, if any, that may now or hereafter be under construction on the Property.

(g) Borrower will pay all dues, fees, or assessments, if any, which are due and payable by Borrower to any homeowners or similar association as a result of the Property's inclusion therein.

(h) Borrower will pay any other expenses and attorneys' fees incurred by Lender pursuant to the Note or as reasonably required for the protection of the lien of this Mortgage.

4. **Payment by Lender.** If Borrower fails to pay any amounts to be paid hereunder to Lender or any third parties, or to insure the Improvements, and deliver the policies as required herein, Lender may make such payments or secure such insurance. The sums so paid shall be additional Indebtedness, bear interest from the date of such payment at the same rate set forth in the Note, be an additional lien upon the Property, and be immediately due and payable upon written demand. This Mortgage secures the repayment of such advances.

5. **Default.** In case of default (i) in the payment of sums to be paid under the Note or this Mortgage, when the same becomes due, (ii) in any of the covenants set forth in this Mortgage, (iii) under the terms of the Note, or (iv) under any addendum attached to this Mortgage, Lender may declare the unpaid balance of the Note and the interest accrued thereon, together with all sums advanced hereunder, immediately due and payable without notice, and Borrower hereby authorizes and empowers Lender to foreclose this Mortgage by judicial proceedings or to sell the Property at public auction and convey the same in fee simple in accordance with Minn. Stat. Ch. 580, and out of the monies arising from such sale, to retain all sums secured hereby, with interest and all legal costs and charges of such foreclosure and the maximum attorneys' fees permitted by law, which costs, charges, and fees Borrower agrees to pay.

6. **Residential Mortgages.** Notwithstanding the provisions of Paragraph 5, if the Indebtedness is a "conventional loan" as defined in Minn. Stat. 47.20, subd. 2(3), Borrower and Lender further covenant and agree as follows:

(a) Lender shall furnish to Borrower a conformed copy of the Note and this Mortgage at the time of execution or within a reasonable time after recordation hereof.

(b) Upon default by Borrower of any covenant or agreement under the terms of this Mortgage, Lender shall give notice to Borrower prior to foreclosure as provided in Paragraph 6(c) and such notice shall specify: (i) the nature of the default; (ii) the action required to cure the default; (iii) a date, not less than thirty (30) days from the date the notice is mailed to Borrower, by which the default must be cured; (iv) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Mortgage and sale of the Property; (v) that Borrower has the right to reinstate this Mortgage after acceleration; and (vi) that Borrower has the right to bring a court action to assert the non-existence of the default or any other defense of Borrower to acceleration and sale.

(c) In addition to any notice required under applicable law to be given in another manner, (i) any notice to Borrower provided for in this Mortgage shall be addressed to Borrower and given by mailing the notice via certified mail to the Property address (or to such other address as Borrower may designate by written notice to Lender as provided herein), and (ii) any notice to Lender shall be given by mailing the notice via certified mail to the following address (or to such other address as Lender may designate by written notice to Borrower as provided herein): **[insert Lender's address]**.

7. **Governing Law; Severability.** This Mortgage shall be governed by the laws of Minnesota. In the event that any provision or clause of this Mortgage or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Mortgage or the Note which can be given effect without the conflicting provision.

8. **Additional Terms.** *Check this box ☐ if Minnesota Uniform Conveyancing Blank 20.2.1 or any other addendum (either one or more) containing additional terms and conditions is attached to this Mortgage. If the foregoing box is not checked, then this Mortgage shall not contain any such additional terms and conditions.* The number of additional attached pages is **[insert number of pages in addendum]**. Terms of this Mortgage will run with the Property and bind the parties hereto and their successors in interest.

Borrower

[signature]

James Rothers

James A Rothers

[printed name of Borrower]

State of Minnesota, County of **Kandiyohi**

This instrument was acknowledged before me on **November 20, 2014**, by **James Rothers, a single person**.

GREGORY RONALD ANDERSON
NOTARY PUBLIC-MINNESOTA
My Comm. Exp. Jan. 31, 2015

[signature]
(signature of notarial officer)

Title (and Rank): ______________________

My commission expires: 1/31/2015 *(month/day/year)*

THIS INSTRUMENT WAS DRAFTED BY:
Gregory R Anderson
Anderson Larson Saunders and Klaassen PLLP
331 SW. 3rd St.
331 Professional Plaza
PO Box 130
Willmar, MN 56201
telephone: 320-235-4313

Note: Failure to record or file this mortgage may give other parties priority over this mortgage.